

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: March 17, 2006

TO : Celeste J. Mattina, Regional Director
Region 2

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: SEIU Local 32 BJ
Planned Building Services
Cases 2-CC-2663; 2-CP-1062

These Section 8(b)(7)(A) and 8(b)(4)(i)(ii)(B) cases were submitted for advice on whether Union handbilling which, on one occasion was accompanied by an inflated turkey balloon with an individual walking around randomly while beating on a drum, and on another occasion was accompanied by an individual wearing a Santa Claus suit and several individuals milling about while beating on drums, amounted to coercive or signal picketing.

We conclude that the Region should dismiss these picketing allegations because (1) the inflated turkey and Santa Claus suit were mere attention getting devices which did not operate as a signal to employees or passersby to take any particular action; and (2) the one drummer walking around randomly, and the several drummers milling about in an uncoordinated fashion, did not patrol across or otherwise interdict the building entrance, nor act as a signal to employees or passersby.

FACTS

In April 2005, Sotheby's contracted with Planned Building Services (PBS) for janitorial services at Sotheby's office building. The Union at that time demanded that PBS recognize it as the representative of the Sotheby's unit of employees. PBS declined, noting that these employees were already represented by another union, NOIYU-UJAT, Local 1.

On November 9th, 16th, and 30th, 2005, the Union distributed handbills at the Sotheby's building entrance. The handbills described PBS as a labor law violator who also undercut area standard wages, criticized Sotheby's for using PBS, and asked recipients of the handbill to contact Sotheby's and protest this conduct. The Region has concluded that the Union's mere handbilling on these occasions did not constitute picketing.

On November 22, 2005, Union distribution of the above handbills was accompanied by the presence of a 6 foot tall inflated turkey balloon and an individual with a plastic drum. The Union positioned the inflated turkey on the edge of the sidewalk, one foot from the street curb which was around 15 feet from Sotheby's entrance. For the next 45 minutes, four individuals in street clothing distributed handbills. Around 15 minutes after the handbilling had begun, an individual wearing a Union shirt arrived, posted himself beside the inflated turkey, and began beating a plastic drum. After several minutes, this individual walked around in a random fashion while beating the drum for around five to six minutes. The drum beating activity did not patrol across or otherwise interdict the building entrance, into which individuals freely passed.

On December 13, the Union's distribution of handbills at the Sotheby's building was accompanied by an individual wearing a Santa Claus suit and Grinch mask who stood 3 feet from the building entrance ringing a bell. For the next 45 minutes, five individuals handbilled while another two to four individuals beat on plastic drums. The drummers stood or moved about in an uncoordinated fashion. Generally, the drummers confined themselves to the area of the sidewalk within 5 feet of the curb without moving in the 10 feet of the sidewalk adjacent to the building.¹ The handbilling, drumming and bell ringing did not disrupt any activity in the building. The drummers did not patrol across, block or otherwise interdict the entrance.²

ACTION

We conclude that the Union did not engage in any unlawful Section 8(B)(7) picketing or Section 8(b)(4)(i)(ii)(B) conduct. The inflated turkey and Santa Claus suit symbols have no historical significance in the labor movement so that their display as mere attention getting devices did not operate as a signal to employees or passersby to take any particular action. The individual briefly walking around randomly while drumming on November 22, and the four individuals milling about in an uncoordinated fashion while drumming on December 13, did not patrol across or otherwise interdict the building entrance, nor act as a signal to employees or passersby.

¹ One drummer stood next to the "Santa" for a few minutes

² After 15 minutes of this activity, a deliverer wheeling a dolly freely passed through the building entrance.

The Board has long held that the presence of traditional picket signs and/or patrolling is not a prerequisite for finding that a union's conduct is the equivalent of traditional picketing.³ The "important feature of picketing appears to be the posting by a labor organization . . . of individuals at the approach to a place of business to accomplish a purpose which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer's business."⁴

The Board has found that individuals milling about in front of a building entrance can amount to coercive patrolling.⁵ However, these individuals were also carrying or wearing signs and thus appeared to be engaged in traditional picketing activity.⁶

The concept of "signal picketing" was developed by the Board to describe union conduct that did not involve traditional picketing, but could be characterized as such because it evoked the same response as a traditional picket line. In other words, "'[s]ignal picketing' . . . describe[s] activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union."⁷ By directing such conduct

³ See, e.g., Lawrence Typographical Union No. 570 (Kansas Color Press), 169 NLRB 279, 283 (1968), *enfd.* 402 F.2d 452 (10th Cir. 1968), citing Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965).

⁴ Stoltze Land & Lumber Co., 256 NLRB at 394.

⁵ American Federation of Nurses (Kaiser Foundation), 313 NLRB 1201, at note 1, 1202-3 (1997); Painters District Council 9(We're Associates), 329 NLRB 140, 142 (1999).

⁶ Compare SEIU Local 87 (Trinity Building Maintenance), 312 NLRB 715, 748 (1993), *enf'd* 103 F.3d 139 (9th cir. 1996) (40 individuals patrolling at entrance with flags constitutes picketing) with Service Employees (General Maintenance Co.), 329 NLRB 638, 683 (1999) (40 to 50 individuals holding rally at building entrance not picketing; no signs, patrolling, confrontation or blockage).

⁷ Operating Engineers Local 12 (Hensel Phelps), 284 NLRB 246, 248 fn. 3 (1987) (citation omitted). Accord: Electric Workers Local 98 (1987) (Telephone Man), 327 NLRB 593, 539 and fn. 3 (1999) (finding "signal picketing" at neutral gate where, among other things, union agent stood near gate and wore observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

at neutrals' employees, a union can violate both 8(b)(4)(i) and (ii)(B).⁸ The General Counsel has previously argued that a union's use of a large inflated rat, which can be considered a well-known symbol of a labor dispute, could constitute conduct tantamount to picketing intended to induce employees to withhold services or persuade third persons not to do business with these establishments.⁹

On the other hand, the General Counsel has also concluded that the use of other attention getting devices, such as an inflated skunk, have no historical significance in the labor movement and do not, by their mere display, operate as a signal to employees or passersby to take any particular action.¹⁰ Accordingly, we conclude that the mere display in this case of the inflated turkey on November 22, and the merer wearing of the Santa Claus costume on December 13, did not operate as an unlawful signal to take any particular action.

We also conclude that the Union engaged in no additional conduct on those dates that amounted to coercion of, or a signal to, patrons or employees to not enter Sotheby's building. The walking around while drumming on November 22 did not constitute confrontational, patterned patrolling but rather consisted of random movement which also lasted for only a for a few minutes without interdicting the building entrance. The individuals beating on the drum on December 13 similarly did not patrol across nor interdict the building entrance but rather milled about in an uncoordinated fashion. The individuals drumming on both November 22 and December 13 merely used the plastic drums as a noise making devices to draw attention to the Union handbilling, and not to signal passersby to refuse to enter the building. Their conduct was not located at an

⁸ See generally Service Employees Local 87 (Trinity Maintenance), *supra*.

⁹ See Brandon Regional Hospital, Case 12-CC-1258, Advice Memorandum dated April 4, 2003; [FOIA Exemption 5

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¹⁰ See, e.g., Laborers Local 222 (Martell Construction), Case 4-CC-2445, Advice Memorandum dated December 14, 2005; Bricklayers Local 1 (Yates Restoration Group), Case 2-CD-1062, Advice Memorandum dated January 12, 2004; UNITE (Sterling Laundry), Case 5-CC-1278, Advice Memorandum dated April 1, 2004; Construction And General Building Laborers, Local 79 (C&D Restoration, Inc.), Case 2-CP-1036-1, dated August 15, 2003.

employee entrance, and was not intended to act, and in fact did not act, as an inducement of employees to withhold their services.

We thus find that the above Union conduct did not amount to unlawful Section 8(B)(7) picketing or Section 8(b)(4)(i)(ii) inducement or coercion.

B.J.K.